

UTILITIES DIVISION[199]

Adopted and Filed

Rule making related to nonutility services

The Utilities Board hereby amends Chapter 34, “Nonutility Service,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 17A.4, 474.5 and 476.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 476.2, 476.73, 476.80 and 546.7.

Purpose and Summary

This rule making identifies and updates or eliminates rules that are outdated or inconsistent with statutes and other administrative rules.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 22, 2017, as **ARC 3457C**.

On December 12, 2017, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed a statement indicating that OCA had no objection to the proposed amendment. Also on December 12, 2017, Interstate Power and Light Company (IPL) and MidAmerican Energy Company (MidAmerican) (collectively the Joint Utilities) filed a statement objecting to the proposed amendment that would adopt a revised definition, in terms of 60 percent of gross revenue, of the “engaged primarily” standard for a competitor’s eligibility for access to certain utility services. In particular, the Joint Utilities argued that the Board’s proposed amendment is unnecessary since they claim that the current rule language is “entirely consistent with Iowa Code §476.80 because it mirrors the language found therein and does not warrant a change.” They further argued that the proposed redefinition of the “engaged primarily” standard in terms of a percentage of gross business revenue is inconsistent with their business practices. The Board considered the comments but found that the 60 percent threshold was a clearer guideline than the current rule.

The Board issued an order adopting the amendment on February 12, 2018. The order is available on the Board’s electronic filing system at efs.iowa.gov under Docket No. RMU-2016-0039. The Board adopted the amendment as published under Notice of Intended Action.

Adoption of Rule Making

This rule making was adopted by the Utilities Board on February 12, 2018.

Fiscal Impact

After analysis and review of this rule making, the Board concludes that the amendment will have no effect on the expenditure of public moneys within the State of Iowa.

Jobs Impact

After analysis and review of this rule making, the Board concludes that the amendment will not have a detrimental effect on employment in Iowa.

Waivers

Chapter-specific waiver provisions are unnecessary since any person may apply for waiver of any Board rule under rule 199—1.3(17A,474,476).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on April 18, 2018.

The following rule-making action is adopted:

Amend rule 199—34.4(476) as follows:

199—34.4(476) Engaged primarily in providing the same competitive nonutility services in the area—defined. *“A person is engaged primarily in providing the same competitive nonutility services in the area”* when the person on ~~a full-time~~, an ongoing basis sells or leases equipment or products or offers services, accounting for at least 60 percent of the person's gross business revenue, which are functionally interchangeable and considered similar by the public with the nonutility service provided by a public utility in the same identifiable geographic area where the public utility provides utility service.

[Filed 2/12/18, effective 4/18/18]

[Published 3/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/18.